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Issue date: 12Dec2001

Case No.: 2000-MSP-0010

In the matter of

UNITED STATES DEPARTMENT OF LABOR
Complainant,

v.

MANUEL URBINA,
Respondent

Appearances:

Leslie John Rodriguez, Esq.
For Claimant

Manuel Urbina
Pro se

Before: DANIEL A. SARNO, JR.
Administrative Law Judge

DECISION AND ORDER

This proceeding arises from alleged violations of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801, *et seq.*, (the "MSPA") and the regulations enacted thereunder at 29 C.F.R. Part 500. On July 17, 1998 the United States Department of Labor (the "DOL" or "Complainant") notified Respondent Manuel Urbina ("Respondent") of an assessment of a civil money penalty in the amount of \$12,350 for violations of the MSPA. Pursuant to Respondent's exception, the matter was referred to the Office of Administrative Law Judges for a hearing. On June 20, 2001, a formal hearing was held in Columbia, South Carolina. Respondent wished to proceed without the assistance of counsel. Both parties had full opportunity to present evidence at the hearing and both parties submitted post-hearing briefs. The court's decision is based on the testimony from the hearing and the documents admitted into evidence.¹

¹The following abbreviations will be used as citations to the record:
CX- Complainant's Exhibits

Background

Respondent has been a farm labor contractor in the southeast since at least 1987. CX 22. As part of his operations, he has operated a migrant worker camp in Gable, South Carolina. TR 59, 65. Respondent has a long history of MSPA violations, and as a result of failing to pay civil penalties for these violations, the DOL revoked Respondent's farm labor contractor certificate in 1996. CX 3. In January 1998, Respondent reapplied for a farm labor contractor certificate for work he intended to perform later that year in South Carolina. CX 5.

Scott Gear is an investigator with the DOL. TR 37. He has been employed there for 23 years. TR 71. Mr. Gear conducts investigations of and assesses civil money penalties to agricultural entities. TR 38. In July 1998, Mr. Gear was stationed in South Carolina as part of an agricultural task force. TR 38. On July 13, 1998, Mr. Gear and investigator Pete Hernandez drove by the former Belts Motel, a facility known to them to have been used as migrant worker camp. TR 38-39.

The Belts camp is an old converted motel. TR 54. It has a large parking lot in front of four buildings, each holding several rows of rooms. TR 54. At the site, Mr. Gear and Mr. Hernandez began an investigation of the camp. TR-39. They investigated by first interviewing workers² and Respondent's two sons who were present at the housing. After the interviews, Mr. Gear and Mr. Hernandez inspected the worker's rooms and the surrounding facilities. TR 55.

Workers staying at the camp stated that they had permanent residences somewhere else. TR 66-67. While living at the camp, workers held agricultural employment at local farms, working with onions, ginko, squash, tomatoes, and tobacco. TR 48, 50, 57, 59.

Respondent was not present when Mr. Gear and Mr. Hernandez began investigating, but arrived at the camp shortly thereafter. TR 40-41. Mr. Hernandez formally interviewed Respondent and made several findings. TR 42. Workers at the camp were furnished by Respondent to Bland Farms in Georgia before accompanying Respondent to the camp early that summer. TR 47. Respondent contracted with at least one local farmer to provide employment to the workers. CX 8. In addition, Respondent was involved in providing housing to the workers at the camp during their employment. TR 47.

TR- Transcript of the hearing

²Interviews during the investigation were performed and recorded in Spanish, and later translated into English. The court notes that the English versions admitted into the record appear to be fair and accurate translations.

Mr. Gear and Hernandez observed many serious safety and health violations at the camp. TR 39. Of the 80 or 90 migrant camps that Mr. Gear had inspected in South Carolina in the course of seven years, he rated the Belts camp as an eight or nine, ten being the worst. TR 71. Mr. Gear described the camp:

I haven't seen a camp where they wouldn't make the water potable, and this condition went on for three or four years There was wires running from place to place, people had to wash outside. They had to take - -use a hose to take a shower. They had to bring a hose in through one, from one building to another into a shower stall, because the shower didn't work. They were bathing outside. Doing their laundry outside. The camp was filthy.

TR 71-72. Besides substantive health and safety violations, investigators determined that the workers at the camp had not received MSPA required disclosures. TR 92; CX 12. Based on interviews and their own inspection, Mr. Gear and Mr. Hernandez could not find any posters that described the terms and conditions of either employment or housing. TR 92; CX 12.

Three days after the DOL inspection, the South Carolina Department of Health and Environmental Control (the "DHEC") came to the Belts camp to inspect the water system. TR 65. The DHEC inspected the well and concluded that the system was unsatisfactory and, among other things, that it contained high levels of bacteria. CX 38. The DHEC charged Respondent with seventeen operation and maintenance violations and instituted civil penalties against him. Respondent signed a consent order acknowledging ownership and control of the water system. CX 38.

Based on its investigation, the DOL instituted \$12,350 in civil money penalties against Respondent for violations of the MSPA. Respondent is charged with violating seven statutory provisions.

ISSUES

The specific issues in this case are as follows:

1. Did Respondent violate 29 U.S.C. § 1811(a) which prohibits a person from engaging in farm labor contracting activity without an authorizing certificate of registration?
2. Did Respondent violate 29 U.S.C. § 1815(2)(B) which requires a certification of registration when a person intends to use, or caused to be used, vehicles to transport migrant or seasonal agricultural workers?
3. Did Respondent violate 29 U.S.C. § 1815(2)(C) which requires a certification of registration when a person intends to use, or caused to be used, real property to house migrant agricultural workers?

4. Did Respondent violate 29 U.S.C. § 1821(a) which requires farm labor contractors to provide, prior to the commencement of work, written information concerning the terms and conditions of employment?

5. Did Respondent violate 29 U.S.C. § 1821(c) which requires farm labor contractors that provide housing for migrant agricultural workers to post a statement of any terms and conditions of the housing?

6. Did Respondent violate 29 U.S.C. § 1823(a) which requires a person who owns or controls housing used by migrant agricultural workers to ensure that the housing complies with Federal and State safety and health standards and to post certification that the housing meets the standards?

7. Did Respondent violate 29 U.S.C. § 1841(b)(1)(C) which requires a person who operates or causes to be operated any vehicles used to transport migrant agricultural workers to have an insurance policy or a liability bond insuring against damage to persons and property?

8. Whether the penalty proposed by the Secretary is reasonable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In 1983, Congress enacted the MSPA to ensure the protection of migrant and seasonal workers. *See* 29 U.S.C. § 1801; *Zappala Farms*, 1997-MSP-9 (ARB Aug. 29, 2001). This legislation was designed “to protect workers whose employment had been historically characterized by low wages, long hours and poor working conditions.” *Castillo v. Case Farms of Ohio, Inc.*, 96 F.Supp.2d 578, 587 (W.D. Tex. 1999) (citations omitted). Despite previous Congressional efforts, “many migrant and seasonal agricultural workers remain . . . the most abused of all workers in the United States.” *Id.* at 588 (citations omitted). The Administrative Review Board has noted that “[i]n designing the MSPA, Congress took a completely new approach, making agricultural entities directly responsible for farmworkers who, as a matter of economic reality, depended upon them . . .” *Zappala Farms*, 1997-MSP-9, 9 (ARB Aug. 29, 2001) (quoting *Antenor v. D&S Farms*, 88 F.3d 925, 930 (11th Cir. 1993)).

The MSPA establishes wide-ranging protections and remedies for migrant workers through its requirements for farm labor contractors and those who house migrant workers. Respondent is charged with violating the statutory provisions that provide for the registration of farm labor contractors, require disclosure to workers of the terms of their employment and housing, and regulate the housing and transporting of workers.

I. Registration Requirements

A central function of the MSPA is its creation of a registration system for those who recruit and furnish migrant and seasonal agricultural workers. Employers who use farm labor contractors must take

reasonable steps to determine if a contractor has a valid certificate of registration. *See* 29 U.S.C. § 1842. The purpose of this system is to make employers who use farm labor contractors liable for guaranteeing the contractor's compliance with the protections of the MSPA. *See Howard v. Malcolm*, 852 F.2d 101, 106 (4th Cir. 1988). Respondent is charged with engaging in farm labor contracting without a valid certificate of registration and for failing to obtain amendments for both transportation and housing.

A. Unregistered farm labor contracting: alleged violation of 29 U.S.C. § 1811(a).

The MSPA requires farm labor contractors to obtain a certificate of registration. A "farm labor contractor" is a person who performs farm labor contracting activity "for money or other valuable consideration paid or promised to be paid. . ." 29 U.S.C. § 1802(7). The term "farm labor contracting activity" is defined as "recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker." 29 U.S.C. § 1802(6). A "migrant agricultural worker" is "an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence." 29 U.S.C. § 1802(8)(A). Agricultural employment includes "the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state." 29 U.S.C. § 1802(3). Section 101 (a) of the MSPA prohibits any person from engaging "in any farm labor contracting activity, unless such person has a certificate of registration from the Secretary specifying which farm labor contracting activities such person is authorized to perform." 29 U.S.C. § 1811(a).

Employees with whom Respondent contracted were engaged in agricultural work. Their work involved the handling and processing of several agricultural commodities. CX 30. In statements to investigators, Respondent stated that his workers were "working in the ginko and tomatoes." CX 30. At other times, they worked with onions and tobacco. TR 58-59. These were migrant workers because they utilized the Belts camp as temporary overnight housing during their employment, maintaining permanent residences in other locations. TR 66-67.

Beginning in the spring of 1998, Respondent recruited, solicited, furnished, and hired these workers for employment at farms in South Carolina. Respondent received compensation for these activities. Farmer Everett Haley gave this statement to investigators:

On about 7/6/98, [Respondent] Manual Urbina came to me and asked me if I needed workers. I told him that I did need some for the packing shed. We agreed that I would pay him \$.50 a man hour for the workers. I will pay him when the packing shed closes in a week or two. He furnished me with the workers who I think came here and still come here in their own cars. I'm using six or 7 workers of [Respondent's]. I thought [Respondent] was a registered [farm labor contractor], but I did not ask to see his registration I've known [Respondent] a long time.

CX 8. Respondent admits that workers came with him from Georgia to South Carolina for the purpose of engaging in agricultural work. CX 7. According to Respondent, he expected to be paid "for sending the people over there." CX 7. Respondent further stated, "[w]e have 30 people working here. . . . We pay

them \$5.15 an hourWhen they were working in the squash *we* paid them 50¢ a bucket.” CX 30 (emphasis added). Worker Paula Rodríguez gave investigators the following description of her work:

We work at the packing shed, but if there isn’t any work there we’re taken to the fields to work. We’re paid \$5.40 an hour to work in the fields . . . [Respondent] brought us here to work . . . We’re not charged to live here. We’ve been here for two months. We’ve just arrived from Georgia with [Respondent].

CX 10. Ms Rodríguez’ statement is corroborated by a pay stub from Everette Haley’s farm. CX 9. The stub indicates that she worked 41.75 hours during the week of July 1, 1998. CX 9.

Respondent has engaged in this farm labor contracting activity without a certificate of registration. Respondent’s farm labor contractor certificate was revoked in 1996 due to his failure to pay previous civil money penalties. CX 3; TR 97. This revocation has remained in effect and he has not been awarded a new certificate. CX 4.

Respondent may not insulate himself from liability by claiming that he was merely helping his sons. Respondent argued that he is now “out of the business” and just assisting his family. TR 100. While he may no longer be in charge of the family business, Respondent cannot escape liability by claiming that others dealt more directly with the workers. *See Soliz v. Plunkett*, 615 F.2d 272, 277 (5th Cir. 1980). The MSPA applies to all “middlemen.” *Id.* All person engaging in farm labor contractor must obtain certification and must comply with the same standards. *See* 29 C.F.R. §500.20, §500.62. These requirements apply equally, regardless of the farm labor contractor’s position in the business structure. Whether the owner, boss, or employee on the lowest rung of the company ladder, farm labor contracting work requires a certificate. Respondent, therefore, violated 29 U.S.C. § 1811(a) by engaging in farm labor contracting activity without a certificate of registration.

B. Unregistered transportation of migrant workers: alleged violation of 29 U.S.C. § 1815(2)(B).

The MSPA places additional registration requirements on those farm labor contractors involved in transporting workers. Farm labor contractors must obtain a specific amendment to their certificate if they intend to provide transportation to workers. Section 105(2) provides:

During the period for which the certificate of registration is in effect, each farm labor contractor shall . . . apply to the Secretary to amend the certificate of registration whenever the farm labor contractor intends to . . . use, or cause to be used, another vehicle than that covered by the certificate to transport any migrant or seasonal agricultural worker . . .

29 U.S.C. § 1815.

Respondent states that all of the workers from Georgia came to South Carolina in their own cars. There is no evidence that Respondent was involved, at any later point, in transporting the workers from the camp to work. Investigators observed only four cars parked at the camp. Complainant has formulated that, because there were so few cars, Respondent must have assisted in providing transportation. This inference, however, remains mere speculation and is not supported by any other evidence in the record. In fact, farmer Everette Haley stated to investigators that Respondent's workers "come here in their own cars." Respondent, therefore, did not violate 29 U.S.C. § 1815(2)(B).

C. Unregistered housing of migrant workers: alleged violations of 29 U.S.C. § 1815(2)(C).

Similar to the transportation amendment, the MSPA places an additional requirement on those farm labor contractors involved with providing housing. Section 105(2) provides:

During the period for which the certificate of registration is in effect, each farm labor contractor shall . . . apply to the Secretary to amend the certificate of registration whenever the farm labor contractor intends to . . . use, or cause to be used, another real property or facility to house any migrant agricultural worker than that covered by the certificate.

29 U.S.C. §1815.

As part of his farm labor contracting activity, Respondent provided housing to his workers at the Belts camp. The workers from Georgia arrived with Respondent at the camp with the intention of staying there while employed at local farms. CX 10. Respondent and his two sons are the apparent owners of the facility and have been using it as a migrant worker camp for several years. *See* discussion, *infra* at III., A., 1.

The language of this section requires contractors to apply for a housing amendment, thus presupposing that the contractor already holds a valid certificate.³ Respondent is liable for a violation of this section despite not possessing a certificate. Additional failures should not confer an advantage. *See Stewart v. James*, 519, F.Supp. 315, 320 (E.D.N.Y. 1981) (arguing that liable farm labor contractors "may not be heard to argue that their wholly unlawful conduct merits the same degree of liability as that of a person who has failed to comply with only one of the provisions.") Consequently, the court finds that Respondent violated 29 U.S.C. § 1815(2)(C) despite his failure to obtain a certificate.

II. Disclosure Requirements

³ Respondent's son Martin may also be liable under this section. Although he possessed a farm labor contractor certificate, it did not include an amendment authorizing housing.

As part of its purpose of assuring the “necessary protections for migrant and seasonal workers,” 29 U.S.C. § 1801, the MSPA dictates that specific information be disclosed in writing to workers. Respondent is charged with failing to disclose to workers the terms and conditions of both their employment and housing.

A. Failure to disclose the terms and conditions of employment: alleged violation of 29 U.S.C. § 1821(a).

The MSPA requires farm labor contractors to disclose to their workers the terms and conditions of their employment. Section 201(a) provides: “each farm labor contractor . . . which recruits any migrant agricultural worker shall ascertain and disclose in writing to each such worker who is recruited for employment” certain information regarding the worker’s recruitment. 29 U.S.C. §1821(a).⁴ These terms are to be provided “at the time of recruitment or if sufficient information is unavailable at that time, at the earliest practicable time but in no event later than the commencement of work.” *Id.* Farm labor contractors typically comply with this requirement by displaying a “WH-516 poster” containing the necessary information. TR 93-94.

⁴ The relevant provision of the MSPA provides:

Each farm labor contractor . . . which recruits any migrant agricultural worker shall ascertain and disclose in writing to each such worker who is recruited for employment the following information at the time of the worker’s recruitment:

- (1) the place of employment;
- (2) the wages and rates to be paid;
- (3) the crops and kinds of activities on which the worker may be employed;
- (4) the period of employment;
- (5) the transportation, housing, and any other employee benefits to be provided, if any, and any costs to be charged for each of them;
- (6) the existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment;
- (7) the existence of any arrangements with any owner or agent of any establishment in the area of employment under which the farm labor contractor . . . is to receive a commission or any other benefit resulting from any sales by such establishment to the workers’ and
- (8) whether state workers’ compensation insurance is provided, and, if so, the name of the state workers’ compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period which such notice must be given.

Investigators did not observe any posters at the Belts camp. TR 92. A worker at the camp reported to investigators that “[w]e have not seen any type of poster which gives us any information. I think they are paying us \$5.50 an hour.” CX 12. Respondent admits that he “did not provide them with a 516, explaining what they would be paid.” CX 7. Respondent paid his workers in cash, supplying a pay stub that described only the workers’ hours, wage, and social security deductions. CX 11. Respondent violated 29 U.S.C. § 1821(a) by failing to disclose to his workers the terms and condition of their employment.

B. Failure to disclose the terms and conditions of housing: alleged violation of 29 U.S.C. § 1821(c).

In addition, farm labor contractors must disclose the terms and conditions of housing. Section 201(c) of the MSPA provides: “[e]ach farm labor contractor . . . which provides housing for any migrant agricultural worker shall post in a conspicuous place or present to such worker a statement of the terms and conditions, if any, of occupancy of such housing.” 29 U.S.C. § 1821(c). Farm labor contractors typically comply with the disclosure requirement by displaying a “WH-521 poster” containing the necessary information. TR 93-94.

As with the terms and conditions of employment, investigators did not observe any posters at the Belts camp concerning housing. TR 92. Workers confirmed these observations. TR 92; CX 12. Respondent, therefore, violated 29 U.S.C. § 1821(c) by failing to disclose the terms and condition of housing provided to his workers.

III. Transportation and Housing of Workers

Along with the registration and disclosure requirements, the MSPA regulates the transportation and housing of migrant workers, incorporating substantive federal and state health and safety standards. Respondent is charged with both failing to meet these health and safety standards and for failing to display certification of compliance with those standards. In addition, Respondent is charged with transporting workers without proper insurance.

A. Housing and safety standards: alleged violations of 29 U.S.C. § 1823(a).

The MSPA requires that housing providers comply with certain health and safety standards. Section 203 provides that “each person who owns or controls a facility or real property which is used as housing for migrant agricultural workers shall be responsible for ensuring that the facility or real property complies with substantive Federal and State safety and health standards applicable to that housing.” 29 U.S.C. § 1823(a).

1. Ownership and Control

The MSPA assigns responsibility for housing standard violations to the person who owns or controls the facility. MSPA regulations guide the interpretation of this section. A person who has a “legal or

equitable interest” in a property is an owner. 29 C.F.R. § 500.130(b). A person is in “control” of a housing facility if the “person is in charge of or has the power or authority to oversee, manage, superintend or administer the housing facility or real property either personally or through an authorized agent or employee, irrespective of whether compensation is paid . . .” 29 C.F.R. § 500.130(c).

The term “control” is “intended to include broad-ranging activities.” *See Castillo v. Case Farms of Ohio, Inc.*, 96 F.Supp.2d 578, 614 (W.D. Tex. 1999). In considering the MSPA, “[t]he Congressional Committee intended ‘that this section be interpreted with the broadest possible meaning to ensure that the person who owns or controls the facility used as housing . . . is responsible for maintaining that facility in compliance with all substantive . . . safety and health standards.’” *Id.* (quoting H. Rep. No. 97-885, at 17-18, *reprinted in* 1982 U.S.C.C.A.N. at 4563-4564). In conforming with this intent, courts have recognized that the MSPA “is a remedial statute and should be construed broadly to effect its humanitarian purpose.” *Caro-Galvan v. Curtis Richardson, Inc.*, 993 F.2d 1500, 1505 (11th Cir. 1993).

A provider of housing is liable under this section even if there is more than one person who owns or controls the housing. MSPA regulations provide that “[i]f more than one person is involved in providing housing for any migrant worker . . . both persons are responsible for ensuring that the facility or real property meets applicable Federal and State housing standards.” 29 C.F.R. § 500.130(a). *See also, Rodriguez v. Carlson*, 943 F.Supp. 1263, 1268 (E.D. Wash. 1996) (“[T]he responsibility for compliance with substantive health and safety requirements can be joint and several.”).

Respondent does not dispute that at an earlier time he was the legal owner of the camp. Instead, Respondent argues that his son owned and control the camp at the time of the investigation. According to Mr. Gear, Respondent, his son, and several workers stated that Respondent was the owner of the camp at the time of the investigation. TR 41-42. Complainant, however, does not provide any evidence of these statements.

Complainant produced, however, other evidence that Respondent owned and controlled the Belts camp at the time of the investigation. First, on March 29, 2000 the DHEC executed a consent order involving the water system at the camp. CX 38. Respondent signed the order, thereby agreeing to the included findings of facts. Specifically, Respondent admitted that he “owns and is responsible for the operation and maintenance” of the well at the camp. CX 38. In addition, Respondent signed his name as the “Owner” of the “Belts Motel Camp.” CX 38. Second, in a statement made to investigators, Respondent commented, “[w]e have 30 people working. The people don’t pay to live here, nor do they pay for the electricity. If there is no hot water, it isn’t my fault, I’ve put in hot water heaters to heat the water.” CX 7 (emphasis added). Third, Mr. Gear has received at least two requests by Respondent for pre-certification inspections of the camp. TR 83. In 1995, Mr. Gear performed a pre-certification inspection of the Belts camp at Respondent’s request. TR 39. Finally, as part of his 1998 application for a farm labor contractor certificate, Respondent lists the Belts camp post office box as his permanent address. CX 2.

At best, Respondent has indicated that he is not the sole owner and controller of the facility. Respondent’s sons appear to assist to a small degree in the family business of farm labor contracting.

Respondent, nevertheless, continues to be substantially involved in providing and maintaining the facility for migrant workers. Complainant has shown, therefore, that Respondent is liable as a person owning and controlling the Belts camp.

2. Substantive requirements

The regulations promulgated by the Occupational Safety and Health Administration (“OHSa”), set forth the applicable requirements for temporary labor camps. *See* 29 C.F.R. §1910.142. Respondent is charged with a long list of health and safety violations. In particular, Respondent is charged with failing to provide an adequate campsite; shelter; water supply; toilet facilities; laundry, handwashing, and bathing facilities; lighting; refuse disposal system; kitchen facilities; first aid facilities; and functional fire extinguishers and smoke detectors. A discussion of each alleged violation follows.

Inadequate campsite

Respondent is charged with failing to provide a campsite with adequate drainage. MSPA regulations state:

All sites used for camps shall be adequately drained. They shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent water surfaces can be subject to mosquito control measures. The camp shall be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.

29 C.F.R. § 1910.142(a)(1). Complainant has shown that the camp failed to comply with this section. During their inspection, investigators found “[s]tanding water from washing clothes and dishes outdoors with hoses, all near [the] septic tank.” CX 20; CX 15. Photographs from the camp clearly show standing water resulting from washing as well as areas where water has failed to drain from a tire rut. CX 15. A variety of insects gathered in these surface collections. TR 73.

Respondent is charged with providing overcrowded structures. MSPA regulations require that: “[a]ll sites shall be adequate in size to prevent overcrowding of necessary structures.” 29 C.F.R. § 1910.142(a)(2). Complainant has shown that the camp failed to comply with this section. Investigators observed several very crowded rooms at the camp. Mr. Gear recorded that the “[a]partment in [the] middle [building was] overcrowded with 8 people. Another [was] overcrowded [with] 4 people.” CX 20; CX 17. Mr. Gear described the middle building as “overcrowded with eight people. I mean just bed to bed to bed.” TR 73.

Respondent is charged with failing to provide clean and refuse free grounds at the camp. MSPA regulations require that “[t]he grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.” 29 C.F.R. § 1910.142(a)(3). Complainant has shown that the camp failed to comply with this section. Investigators observed “trash on ground, beer cans in bags; trash and debris alongside [the] north [building], flies, ant[s] [were] evident.” CX 20; CX 14. A used toilet was left outdoors along with other garbage, attracting “all kinds of insects.” TR 73; CX 14. Photographs show that the camp was extremely dirty and left almost entirely in disrepair. CX 14.

Inadequate Shelter

Respondent is charged with failing to provide a shelter that provided protection against the elements. MSPA regulations require that “[e]very shelter in the camp shall be constructed in a manner which will provide protection against the elements.” 29 C.F.R. § 1910.142(b)(1). Complainant has shown that the camp failed to comply with this section. Investigators observed that the “ceiling over [the] shower [was] collapsing [and] appears to have leaked in rainy weather.” CX 20; CX 16. In addition there were “broken windows in [the] north [building].” CX 20. TR 73. Photographs reveal shockingly filthy and unfit housing. CX 16.

Respondent is charged with failing to provide sufficiently large sleeping rooms. MSPA regulations require that “[e]ach room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant.” 29 C.F.R. § 1910.142(b)(2). Complainant has shown that the camp failed to comply with this section. Mr. Gear recorded that the “[a]partment in [the] middle [building was] overcrowded with 8 people. Another [was] overcrowded [with] 4 people.” CX 20; CX 17. Photographs reveal sleeping quarters packed tight with mattresses, personal belongings, and dirty bedding. CX 17.

Respondent is charged with failing to provide appropriate bedding for workers. MSPA regulations provide:

Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor.

29 C.F.R. § 1910.142(b)(3). Complainant has shown that the camp failed to comply with this section. Investigators found “mattresses on [the] floor in two units.” CX 20; CX 17. At least several of the apartments lacked sufficiently spaced bedding. One apartment was overcrowded with 8 people, another overcrowded with 4 people. CX 20; CX 17.

Respondent is charged with failing to provide appropriate exterior openings to the shelter. MSPA regulations state that “[a]ll exterior openings shall be effectively screened with 16–mesh material. All screen doors shall be equipped with self-closing devices.” 29 C.F.R. § 1910.142(b)(8). Complainant has shown

that the camp failed to comply with this section. Investigators found “screens missing in at least three rooms [and] screen doors missing on some units.” CX 20. CX 18. In addition, some doors were not equipped with self-closing devices. CX 20. Mr. Gear explained the significance of this violation: “In the middle of the summer when you have a lot of flies, and the flies were there for other reasons, because of the trash, and the laundry outside, and the bathing outside, that drew. . .the flies. So they can come into the building easier if there’s no screens.” TR 73.

Respondent is charged with failing to provide appropriate facilities for storing and preparing food. MSPA regulations state: “In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.” 29 C.F.R. § 1910.142(b)(9). Complainant has shown that the camp failed to comply with this section. Investigators found kitchens at the camp “dirty, infested with flies, roaches, and ants.” CX 20; TR 73. Photographs reveal filthy makeshift cooking and cleaning areas with food stored in a window sill and a broken freezer. CX 15; CX 16.

Respondent is charged with failing to provide sufficient hot water equipment. MSPA regulations require that all water heating equipment “be installed in accordance with State and local ordinances, codes, and regulations governing such installations.” 29 C.F.R. § 1910.142(b)(11). Complainant has shown that the camp failed to comply with this section. Investigators found the camp water system to be completely unfit, lacking hot water and forcing some workers to rely entirely on a cold water hose for their washing and cooking needs. CX 20.

Inadequate water supply

Respondent is charged with failing to provide a sufficient quantity of water. MSPA regulations state that “[a] water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of 2 ½ times the average hourly demand.” 29 C.F.R. § 1910.142(c)(2). Complainant has shown that the camp failed to comply with this section. Investigators observed that there was “no water at all in some units.” CX 20. Workers used a cold water hose in order to obtain a sufficient quantity of water for washing and cooking. CX 20.

Respondent is charged with failing to supply properly approved water. MSPA regulations require that “[a]n adequate and convenient water supply, approved by the appropriate health authority, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.” 29 C.F.R. § 1910.142(c)(1). Complainant has shown that the camp failed to comply with this section. A DHEC investigation concluded that the water system was unsatisfactory and contained high levels of bacteria. CX 38. The DHEC subsequently charged Respondent with seventeen operation and maintenance violations. CX 38.

Respondent is charged with failing to supply drinking fountains. MSPA regulations state that “[w]here water pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof.” 29 C.F.R. § 1910.142(c)(4). Although investigators observed no drinking

fountains at the camp, Complainant has not shown that sufficient water pressure was available. Respondent, consequently, cannot be charged with a violation of this section.

Inadequate toilet facilities

Respondent is charged with failing to provide a sufficient quantity of toilets. MSPA regulations provide:

Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 person, with a minimum of two units for any shared facility Urinals shall be provided on the basis of one unit or 2 linear feet or urinal trough for each 25 men.

29 C.F.R. § 1910.142(d)(5) and (6). Complainant has shown that the camp failed to comply with this section. Investigators found that “toilets [were] not flushing” in many of the units. CX 20. Worker Aurora Martinez stated that she was not able to flush her toilet. CX 12. Since many did not function, the camp lacked a sufficient quantity of toilets. Investigators did not find any urinals at the facility. CX 20.

Respondent is charged with failing to provide sanitary toilets. MSPA regulations require that “[p]rivies and toilet rooms shall be kept in a sanitary condition. They shall be cleaned at least daily.” 29 C.F.R. § 1910.142(d)(10). Complainant has shown that the camp failed to comply with this section. Of the few functioning toilets investigators observed, these were “filthy, [and had] mildew, wall rot.” CX 20. Investigators concluded, not surprisingly, that the toilet rooms were not cleaned daily. CX 29.

Laundry, handwashing, and bathing facilities

Respondent is charged with failing to provide adequate laundry facilities. MSPA regulations state:

Laundry, handwashing, and bathing facilities shall be provided in the following ratio: (i) Handwash basin per family shelter or per six persons in shared facilities. (ii) Shower head for every 10 persons. (iii) Laundry tray or tub for every 30 persons. (iv) Slop sink in each building used for laundry, hand washing, and bathing.

29 C.F.R. § 1910.142(f)(1). Complainant has shown that the camp failed to comply with this section. Investigators observed “workers washing clothes with hoses/cold water outdoors.” CX 20; CX 15. Lacking a proper tray or tub, “workers [were] using [a] barrel to launder clothes.” CX 20. TR 86. At least one worker stated that her shower did not work. CX 12.

Respondent is charged with failing to provide adequate floor drainage. MSPA regulations provide:

Floors shall be of smooth finish but not slippery materials; they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor shall be covered. The walls and partitions of shower rooms shall be smooth and impervious to the height of splash.

29 C.F.R. § 1910.142(f)(2). Complainant has shown that the camp failed to comply with this section. Investigators observed that in one room a sink drained “into [the] shower stall.” CX 20. In addition, investigators found that “many bath/showers [had] rotted walls.” CX 20; CX 16.

Respondent is charged with failing to provide adequate hot water. MSPA regulations require that “[a]n adequate supply of hot and cold running water shall be provided for bathing and laundry purposes. Facilities for heating water shall be provided.” 29 C.F.R. § 1910.142(f)(3) Complainant has shown that the camp failed to comply with this section. Investigators observed that none of the units had any hot water. CX 20. Workers relied on a cold water hose in order to bath and clean their clothes. CX 20; CX 15.

Inadequate lighting

Respondent is charged with failing to provide proper electric service to rooms at the site. MSPA regulations state:

Where electric service is available, each habitable room in a camp shall be provided with at least one ceiling type light fixture and at least one separate floor- or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling- or wall-type fixture. Light levels in toilet and storage rooms shall be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot- candles from the floor.

29 C.F.R. § 1910.142(g). Complainant has shown that the camp failed to comply with this section. Investigators observed extremely unsafe electrical conditions, including “poor wiring, unsafe switches, cords on floor, [and] danger of shock.” CX 20; CX 16. Neither was each room supplied with at least one ceiling-type light fixture. CX 20. In addition, the lighting in each room was not of an adequate level. CX 20.

Inadequate refuse disposal

Respondent is charged with failing to provide appropriate refuse containers and stands. MSPA regulations provide:

Fly-tight, rodent-tight, impervious, cleanable or single service containers, approved by the appropriate health authority shall be provided for the storage of garbage. At least one such

container shall be provided for each family shelter and shall be located within 100 feet of each shelter on a wooden, metal, or concrete stand.

29 C.F.R. § 1910.142(h)(1). Complainant has shown that the camp failed to comply with this section. The camp contained areas that were “dirty, infested with flies, roaches, and ants.” CX 20. Investigators also observed “trash on ground, beer cans in bags; trash and debris alongside north [building], flies, ant[s] evident.” CX 20; CX 14. In addition, a used toilet was left outdoors along with other garbage, attracting “all kinds of insects.” TR 73; CX 14. Investigators did not observe any of the proper trash receptacles. CX 20

Respondent is charged with failing to properly empty garbage containers. MSPA regulations require that “[g]arbage containers shall be emptied when full, but not less than twice a week.” 29 C.F.R. § 1910.142(f)(3). Complainant has shown that the camp failed to comply with this section. Investigators encountered a filthy camp, and Respondent did not appear to regularly collect the garbage. CX 20.

Inadequate construction and operation of kitchen:

Respondent is charged with failing to provide facilities to protect food from spoilage. MSPA regulations require that kitchens comply with certain sanitation requirements. *See* 29 C.F.R. § 1910.142(i). Complainant notes that “one freezer [was] incapable of freezing food.” CX 20; CX 16. The freezer was capable, nevertheless, of adequately chilling food at the level of a refrigerator. CX 20. It is not contended that this condition fails to comply with a specific regulation, nor has Complainant alleged a violation of any other requirements for kitchens. Respondent, consequently, cannot be charged with a violation of this section.

Inadequate first aid facilities:

Respondent is charged with failing to provide first aid supplies or equipment at the camp. MSPA regulations state that “[a]dequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for the emergency treatment of injured person.” 29 C.F.R. § 1910.142(k)(1). Complainant has shown that the camp failed to comply with this section. Investigators did not observe any first aid facilities whatsoever at the camp. CX 20.

Inadequate fire extinguishers and smoke detectors

Respondent is charged with failing to provide functional fire extinguishers or smoke detectors. Investigators only observed one extinguisher and it was not charged. CX 20; CX 16. Complainant, nevertheless, has not charged Respondent with violating any specific statutory or regulatory provision. Respondent, consequently, cannot be charged with this violation under the MSPA.

B. Posting of certification requirements: alleged violation of 29 U.S.C. § 1823(b).

In addition to the health and safety standards, the MSPA also requires that farm labor contractors providing housing to post certification of compliance with those standards. Section 203 states that “a State or local health authority or other appropriate agency” must certify that the housing “meets applicable safety and health standards.” 29 U.S.C. §1823(b)(1). Before workers can occupy the housing, certification must be “posted at the site.” *Id.*

Investigators did not observe a posting of health and safety certification anywhere at the camp. TR 91-92. Indeed, certification would have been impossible due to the shockingly unfit living conditions at the camp.

C. Transporting workers without insurance: alleged violations of 29 U.S.C. § 1841(b)(1).

The MSPA requires farm labor contractors who transport workers to carry sufficient insurance. Section 401(b) provides:

When using or causing to be used, any vehicle for providing transportation to which this section applies, each . . . farm labor contractor shall . . . have an insurance policy or a liability bond that is in effect which insures the . . . farm labor contractor against liability for damage to persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant . . . agricultural worker.

29 U.S.C. §1841(b)(1).

The DOL investigation found that Respondent carried only the minimum required insurance to operate a vehicle. TR 90. According to Mr. Gear, Respondent’s insurance agent indicated that Respondent carried only basic coverage and not the additional amount required to transport agricultural workers. TR 90. Respondent failed to provide any other proof of the proper coverage. TR 90-91. Complainant, nevertheless, has failed to prove that Respondent was engaged in transporting workers. *See* discussion, *supra* I., B. Consequently, Respondent cannot be charged with a violation of this section.

IV. Damages

The Secretary has assessed a total of \$12,350 in penalties based on violations of the MSPA. Pursuant to Respondent’s exception, this court will evaluate the appropriateness of this assessment. Section 503 of the MSPA provides:

[A]ny person who commits a violation of this chapter or any regulation under this chapter, may be assessed a civil money penalty of not more than \$1000 for each violation. . . . In

determining the amount of any penalty . . . the Secretary shall take into account (A) the previous record of the person in terms of compliance . . . and (B) the gravity of the violation.

29 U.S.C. § 1853(a). The Secretary may also consider the number of workers affected by the violations; the gravity of the violations; efforts made in good faith to comply with the MSPA; an explanation of the person charged with the violations; a commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated the MSPA; and the extent to which the violator achieved financial gain due to the violation, or the potential financial loss or potential injury to the workers. 29 C.F.R. § 500.143.

Since Respondent is not liable for several of the charges, the penalty is accordingly reduced. Respondent is not liable for transporting workers without a certificate, for failing to provide a drinking fountain, nor for failing to maintain adequate construction and operation of the kitchen. Nevertheless, the Secretary did not assess penalties for these particular violations. The penalty is reduced by \$750, however, since Respondent is not liable for failing to provide fire extinguishers and smoke detectors, and is reduced by an additional \$1000 since he is not liable for transporting workers without insurance. The Secretary's penalty is therefore reduced by \$1,750.

Given the very serious nature of the violations, however, and the apparent disregard of Respondent to the safety and health of his workers, the remaining penalties are reasonable and warranted. Fifteen of Respondent's health and safety violations are considered aggravated, meaning that they pose "an immediate danger and would have an extremely serious impact on the safety and health of the persons affected." CX 19. No less than thirty people were affected by the safety and health violations at the camp. Many of these same violations were observed and charged to Respondent as part of earlier investigations. TR 80-81; CX 22.

Respondent has a long history of violating the MSPA, with some charges dating back to 1988. CX 22; CX 23; CX 24; CX 26; CX 27. In addition, Respondent has failed to pay the numerous civil penalties resulting from these violations. CX 3. At no time has Respondent demonstrated a good faith effort to comply with the MSPA or any other standards designed to protect the workers that have relied on him. In fact, subsequent to DOL's investigation, Mr. Gear observed that the Belts camp "was in worse shape than it was in 1998," causing him to "put up some postings saying [the camp] is uninhabitable." TR 104.

Any further reduction in penalties would be inappropriate in this case. Despite all enforcement efforts, Respondent has found a way to continue his operation, skimming the wages of unwitting and reliant workers while subjecting them to deplorable and inhumane conditions.

ORDER

Accordingly, it is hereby ORDERED that MANUAL URBINA pay a civil money penalty of \$10,600 to the UNITED STATES DEPARTMENT OF LABOR.

A

Daniel A. Sarno, Jr.

Administrative Law Judge

DAS/dmj

Newport News, Virginia

NOTICE OF APPEAL: Within twenty days after the date of issuance of this decision, any party desiring review of the decision may file a petition for issuance of a Notice of Intent as described under 29 C.F.R. §500.265. The filing shall include an original and two copies of the petition, and shall be filed with the Administrative Review Board, U.S. Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which the review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition. Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge. See, 29 C.F.R. § 500.264; Secretary's Order 2-96 (Authority and Responsibilities of the Administrative Review Board), 61 Fed. Reg. 19978 (1996).